IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 30099 of 2007(G)

PETITIONER:

BABY, S/O LATE PHILIPOSE MATHEW,
CHARUVUKALAYIL HOUSE, DOOR NO.16/199(PMC),
KUMBAZHA P.O., PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

ABU, S/O AKBARUDEEN,
NANANGAL HOUSE, KULASEKHARAPATHY,
KUMBAZHA P.O., PATHANAMTHITTA VILALGE,
KOZHENCHERRY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 30099 OF 2007-G

Dated 10th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner challenges Ext.P4 order of the Rent Controller. It is an order in E.A.No.36/2007. He claims ownership of a building and 47 cents of land in Sy.No.111/4/3 of Konni Thazham Village in Kozhencherry Taluk. But, the respondent herein filed R.C.P. No.3/2005, alleging that the petitioner is the tenant and he has defaulted to pay the rent and therefore, seeking eviction on that ground. Eviction was also sought on the ground available under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The petitioner submits, he had engaged a lawyer, who failed to contest the matter. Therefore, he was set ex parte and the R.C.P was allowed. The petitioner has filed a petition to set aside the ex parte order. While so, execution petition was filed by the respondent to execute the order of the Rent Controller. So, he filed E.A. No.36/2007, to keep in abeyance the execution proceedings till his application to set aside the ex parte order is considered. The Rent Controller, by Ext.P4 order, allowed the application, on condition of payment of arrears of rent within two weeks.

This writ petition is filed under Article 227 of the Constitution of India, challenging Ext.P4. According to the petitioner, an onerous condition has been imposed for adjourning the execution petition. The condition imposed is illegal and irrational.

2. Having regard to the facts of the case, we find no jurisdictional error in the impugned order. The petitioner's prayer has been allowed. But, a condition has been imposed in the discretion of the Rent Controller, which cannot be described as perverse or which no man in his senses will impose. Therefore, we decline to interfere with Ext.P4. The learned counsel for the petitioner submits that some time may be granted to pay the amount directed to be deposited. For that the petitioner has to move the Rent Controller first. If only such an application is not considered or rejected on wrong grounds, the question of this Court stepping in arises. Accordingly, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/